

# State of Utah

## Title and Escrow Commission Meeting

### Meeting Information

Date: **March 10, 2008**

Time: **10:15am**

Place: Beehive Room

### Members

(Attendees = x)

#### Commission Members

Chair, Glen W. Roberts, *Utah Cnty*

xDavid M. Lattin, *Salt Lake Cnty*

xCanyon W. Anderson, *Davis Cnty*

xGarry M. Goodsell, *Iron Cnty*

xJerry M. Houghton, *Tooele Cnty*

#### Department Staff

xJohn E. "Mickey" Braun, Jr.  
*Ass't Commissioner*

xPerri Babalis  
*AG Legal Counsel*

Darrel Powell  
*Dir. Market Conduct*

Mark Kleinfeld  
*Admin. Law Judge*

xGerri Jones  
*MC Examiner*

xSheila Curtis  
*MC Examiner*

xConnie Nowland  
*MC Examiner*

xSandra Halladay  
*MC Examiner*

xJilene Whitby  
*PIO/Recorder*

xBrad Tibbitts  
*Director Life, P&CDiv*

#### Public

Bob Rice  
Al Newman

Jeff Jensen

Jeff Wiener

Pete Stevens

Clayton Hansen

## MINUTES

- I. **Welcome and Introductions** / Canyon Anderson  
Canyon conducted the meeting, announced that Glen and his family were in an auto accident the previous day and he needed to be excused. The responsibilities of conducting in Glen's absence were being rotated.
- II. **Adoption of Minutes of Previous Meeting**  
It was noted that the person who seconded the motion to adjourn in last month's meeting was Jerry, not Gerri. Canyon made the **motion** to accept the minutes with this change and Garry seconded it. The vote was unanimous.
- III. **Review & Concur with Licensee Report**  
Canyon asked if the reinstatement process was the same for a license that had lapsed just a day or two after the final reinstatement date. Mickey said that when a license lapses all of the appointments are terminated. The reinstatement process is the same regardless of how after it lapses the license is reinstated. Garry made the **motion** to approve the Licensee Report and Jerry seconded it. The vote was unanimous.
- IV. **Number of Cases Open & Closed**  
Gerri has reassigned many of her cases to other Market Conduct Examiners in the office. She has consolidated multiple cases for one agency into one case. The first 5-6 pages are closed. Consumer complaints will be titled properly next time. The Open and Closed Report is a summary of the investigation report. David made a motion to concur, Garry seconded it and the vote was unanimous.
- V. **Review & Concur with Enforcement Case Report**  
None to report.
- VI. **Old Business**

- **Update Rulemaking Process of R590-153, *Unfair Inducements...* / Mickey**
  - Canyon asked for input regarding comments received during today's rule hearing.
    - Section 4(23) - all felt it was as strong as they could make it.
    - Concern was expressed regarding definition and inclusion of flip transaction. Gerri noted that if the Good Funds Law was violated the department could take action.
    - Perri asked if "simultaneous" should be in the rule? Garry said it had been taken out because they didn't want it confused with "simultaneous reissue rates."
    - Canyon noted it was difficult to delineate which lists were and were not to be charged for. Garry thought a person could be in violation of RESPA they did not charge for materials they provided. Pete Stevens said the original reason for the rule was to set limits, otherwise there was no telling where it would end. Smaller agents will be disadvantaged if it was opened up. The "normal and customary" wording was crafted when Lane Beatty was president of the Senate. Costs must be covered by someone. Pete suggested putting prohibition on everything that is available commercially. We don't want to be in the electronic information business. Al suggested having the Utah Land Title Association provide the lists. Mickey said that as long as the line is bright between what is and is not to be charged for the department can enforce it. Garry said ways would be found to get around minimum charges.
    - Why was R592-6-4(R) deleted? Mickey said that if (R) is kept in the rule no one could require an agent to have a certain amount in the bank in order to do business with them. **Comments on the rule are to be forwarded to Commission members.**
- **Draft Rule for Exemption from the 3 year Licensure/Experience Requirement / Mickey & Clayton**
  - Mickey said the rule had been drafted and Clayton has approved it.
  - The form required for the rule has not been created yet.
  - Exemptions have been left open. There is no due process once exemption is denied. If approved then the department will notify the individual. They would then be asked to apply on-line. By applying in narrative form it gives the person a chance to plead his case. There is no way to quantify experience. **Perri and Mickey will work out the due process procedure.**
  - An application must be reviewed at the first Commission meeting after the department receives it.
  - Canyon asked Clayton how many might participate? Clayton thought maybe a couple of dozen initially and then 2-3 a month.
  - Perri asked what a "completed paper" was, as per Rule R592-4-4(2)(b). Mickey said it should be a paper application. **This needs to be clarified in the rule.**

## VII. New Business

- **Escrow Fees / Canyon**  
Canyon suggested waiting to discuss this until Glen was able to attend. We need to set a value on our escrow services and charge appropriately. Al suggested including discussion on all other fees like doc check fees and the pumping up of other fees. Canyon suggested one escrow fee only. Canyon said some agencies are charging escrow costs in other title fees. Al asked if the escrow claims could be paid from the \$250,000 fund? Canyon thought it should be for bad acts. Mickey said title insurance errors are paid from the \$250,000 and escrow mistakes are in limbo.
- **"Transaction" Definition 31A-23A-406(1) & Split Closing Rule**

- Canyon passed out definition of transaction. ULTA has received a number of comments from agents wanting standardization. Canyon asked that this be put on agenda for the next meeting. He will email copies to everyone.
- Bob asked if this authorized cash transactions? Mickey said it hinged on the interpretation of what a transaction letter is. If transferring funds and not closing then both sides of a split don't need insurance. Currently splits are not legal unless both sides have insurance. A split needs to be defined.
- Bob said Georgia courts just judged closing protection letter as a non-insurance product. Utah's statute regarding splits has been interpreted to mean that a split transaction is two different transactions. Perri said the AG's opinion on split transactions does not apply now because of changes in the statute.
- Until the code is changed, Canyon said the industry would still need to abide by Bulletin 2007-5, Prohibited Split Escrows.
- Canyon's focus was to create standards for splits, which would not include cash closings.
- **Legislative Update** / Mickey  
Canyon noted that HB466, Title Insurance Recovery, Education, and Research Fund Act, would require significant changes in reserve requirements. Mickey said **the department would publish a bulletin soon about how this will be calculated.** The assessment numbers filed April 30 will be the basis. The intent of the legislation was to have the \$250,000 as a base. Claims for the recovery fund go to the department, not the commission. Line 100 of the bill describes how money will be withdrawn from the recovery fund.
- **CE Rule** / Mickey  
The CE rule is being worked on. The Commission could delegate the CE process to the department and then concur or not with what is presented to the Commission. The department receives 6-7 CE courses per year. Title agents are not required to take title related courses for CE. **A rule will need to be written regarding this process.**

VIII. **Other Business** from Committee Members

IX. **Adjourned: Motion** by Garry and seconded by David.

X. **Next Meeting** April 14, 2008, 9a.m.

### 2008 Meetings

Apr 14, Beehive Rm	Aug 11, Beehive Rm
May 12, Beehive Rm	Sept 8, Beehive Rm
June 9, Beehive Rm	Oct 8, Beehive Rm
July 16, Beehive Rm	Nov 10, Beehive Rm
	Dec 8, Beehive Rm